SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JAMES EDWARD D'AUGUSTE** **PART** **IAS MOTION 55EFM**

Justice

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INDEX NO. 160944/2017
MOTION SEQ. NO. 002

KEVIN REILLY

Plaintiff,

- v -

CRANE TECH SOLUTIONS, LLC,

Defendant.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46

were read on this motion to/for DISMISS.

Defendant Crane Tech Solutions, LLC (Crane Tech) seeks an order, pursuant to CPLR 3211, dismissing plaintiff Kevin Reilly's (Reilly) amended complaint with prejudice and the awarding of motion costs. For the reasons set forth below, the motion is granted to the extent of dismissing this action with prejudice.

Crane Tech was hired by the New York City Department of Buildings to investigate and issue a report as to the cause of a February 5, 2016 fatal crane accident that occurred in New York City. Crane Tech eventually issued a report concluding that the accident was caused when the crane's main boom was lowered to 72 degrees and the jib to 49 degrees, which made the crane unstable causing it to collapse. The report also found fault with the failure to lower the crane in advance of wind event as required by the manufacturer specifications. On October 18, 2017, a Crane Tech employee allegedly repeated the company's conclusion regarding the cause of the accident during a continuing education class presumably designed to prevent a similar accident from taking place again.

Reilly was charged with professional misconduct in relation to the accident. Crane Tech

employees testified as experts for the Department of Building at a hearing held before the New York City Office of Administrative Trials and Hearings (OATH). Reilly disputed the assertions that he was responsible for the crane accident. The Administrative Law Judge (Addison) concluded in a report and recommendation dated April 10, 2018 (NYSCEF Doc. No. 35) that Reilly failed to follow the manufacturer's recommendation of laying the boom of the crane down in advance of a wind event. NYSCEF Doc. No. 35 at 66. In reaching this conclusion, the ALJ noted that parked automobiles occupied the area where the boom would have been laid down and that it was not Reilly's responsibility to clear this designated area of pedestrians and vehicles. *Id*. Additionally, it was uncontested that Reilly was not able to lower the crane on his own as he required the assistance of a master rigger and signalmen working in compliance with approved plans. *Id.* In the end, however, the ALJ sustained the charges of misconduct as they related to Reilly's responsibility for the crane being operated unnecessarily in a storm, although the ALJ did not sustain the charges that the lowering the boom to 72 degrees and the jib to 49 degrees rendered the crane unstable and caused it to collapse.

The amended complaint asserts four causes of action: (1) defamation, (2) defamation per se, (3) negligence, and (4) negligent infliction of emotional distress. For reasons discussed herein, all four causes of action are dismissed.

First, all of Reilly's causes of action are dismissed based upon an application of the governmental immunity doctrine. This doctrine applies as Crane Tech was involved in an investigation that was undertaken for the purpose of public protection and safety. *Sebastian v State*, 93 N.Y.2d 790 (1990). Contrary to Reilly's assertion, this doctrine of immunity extends to private contractors retained by governmental entities such as Crane Tech. *Altro v Conrail*, 130 A.D.2d 612 (2nd Dep't 1987).

Second, the defamation causes of action are also dismissed on grounds that the statements are protected by absolute and qualified privileges.[1] Crane Tech was hired by the Department of Buildings to investigate a deadly crane collapse and to issue an investigative report. Crane Tech was therefore performing its services pursuant to authority delegated to it by the Department of Building, which renders the statements made in its report absolutely privileged. Further, even if the statements were not protected by an absolute privilege, they still would be protected by a qualified privilege. This is because, *inter alia*, the statements were made to assist the Department of Buildings in carrying out its public function of investigating the cause of a deadly crane collapse. In this regard, there are, notably, no facts asserted upon which Crane Tech's statements could be considered to have been made with actual malice, which is required to overcome a qualified privilege. Further, under the New York Civil Rights Law, statements related to matters of public interest that are made without actual malice, such as the statements allegedly made during the continuing education class reiterating the report's conclusions, are not actionable. *Sackler v American Broadcasting Companies, Inc*, Index No. 155513/2019, 2021 WL 969809, (Sup. Ct. N.Y. County Mar. 9, 2021) (discussing New York Civil Rights Law § 76-a).

Third, as it relates to the negligence-based claims, there was no special duty that either the Department of Buildings or Crane Tech owed to Reilly that was purportedly violated. *Hamilton v Beretta USA Corp*., 96 N.Y.2d 222 (2001). Further, these claims are duplicative of the defamation claim as they are based upon the same factual allegation that Crane Tech made defamatory statements about him, which requires the dismissal of these claims. *Butler v Delaware Otsego*

[1] Reilly asserts in his amended complaint that Crane Tech issued its report in December 2016. NYSCEF Doc. No. 28. However, he appears to concede in his opposition memorandum of law that the report was actually issued in November 2016. As Reilly did not commence this action until December 8, 2017 (NYSCEF Doc. No. 1), this would appear to also render his defamation claims untimely under CPLR 215(3).

Corp, 203 A.D.2d 783 (3rd Dep't 1994); *Balderman v American Broadcasting Co*, 292 A.D.2d 67 (4th Dep't 2002).

Accordingly, the motion is granted to the extent of dismissing this action in its entirety with prejudice.

This constitutes the decision and order of this Court.

6/23/2021
DATE

JAMES EDWARD D'AUGUSTE, J.S.C.

CHECK ONE:	[x]	**CASE DISPOSED**		**NON-FINAL DISPOSITION**			
	[x]	**GRANTED**	[ ] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		